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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,760	05/14/2001	Pertti Tormala	2880/347	6881

23838 7590 04/25/2003

KENYON & KENYON  
1500 K STREET, N.W., SUITE 700  
WASHINGTON, DC 20005

EXAMINER

PRIDDY, MICHAEL B

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 04/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/853,760

Applicant(s)

TORMALA ET AL.

Examiner

Michael B Priddy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Törmälä et al. (WO99/49792). Törmälä et al. teach a fastener having a shaft 1 comprising a proximal portion 2 with a tapered, curved end and a distal portion 3 having protrusions 4 with proximal surfaces for arresting movement of the shaft in the proximal direction and distal surfaces to permit the movement of the shaft in the distal direction. Furthermore, the protrusions 4 may protrude from longitudinal ridges R extending along the length of the shaft 1 as shown in Fig. 3A. The fastener “may be manufactured of a polymer or a polymeric compound which is substantially (bio)absorbable (resorbable) after implantation in tissue and contains an oriented reinforcing structure or the like of a polymer or polymeric compound or ceramic bioactive glass compound.” A method for using the fastener to repair a torn meniscus is depicted in Figs. 8A-8D and 9-11 and shows the fastener as being completely within the meniscus. In such a position, the proximal surface of the proximal portion 2 would resist proximal movement of the fastener.

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Claims 7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hart et al. (US 5,843,084). Hart et al. teach a surgical fastening system including a fastener 5 including a shaft 10 comprising a proximal portion 35 with a tapered, curved end 60 and a distal portion 30 having protrusions 40 with proximal surfaces 50 configured to arrest the movement of the shaft in the proximal direction and distal surfaces 45 configured to permit the movement of the shaft in the distal direction. In the procedure illustrated in Figs. 24-28, the fastener is inserted across a rupture in a meniscus and the only the curved end of the fastener is positioned on the surface of the meniscus. An alternate embodiment of the fastener is depicted in Figs. 33 & 34 and is used in a procedure to secure a mesh to tissue wherein the tapered curved end contacts the mesh.

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated Törmälä et al. (WO 99/01071). Törmälä et al. teach fastener having a shaft 1 comprising a proximal portion 2 with a tapered, curved end and a distal portion 3 having protrusions 4 with proximal surfaces for arresting movement of the shaft in the proximal direction and distal surfaces to permit the movement of the shaft in the distal direction. As shown in Fig. 5, the curved, tapered proximal end also may include protuberances having proximal surfaces configured to arrest the movement of the shaft in the proximal direction.

### ***Response to Arguments***

Applicant's arguments filed 02/14/2003 have been fully considered but have not been found to be persuasive. Applicant has argued that WO99/49792 fails to teach a fastener having "a tapered, curved end". Merriam Webster's Collegiate Dictionary 10<sup>th</sup> defines taper—progressively narrowed toward one end. The Examiner believes that the end 2 of WO99/49792 tapers down to the diameter of shaft 1 towards the distal portion 3. Furthermore, as shown in Fig. 2F, the end may have a circular (curved) cross-section.

Applicant has also argued that Hart et al. fail to teach this feature. The Examiner contends that the end 60 is rounded (curved) at its extreme. Hence it does not abruptly terminate in a flat plane. The Examiner believes that due to its rounded nature, it is inherently tapered.

Similar reasoning applies to Fig. 5 of the WO/99/01071 reference.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Michael B. Priddy  
*Michael B. Priddy*  
April 21, 2003

*Kevin Shaver* 4/23/07  
KEVIN SHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700